

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 657

Introduced by Wayne, 13.

Read first time January 23, 2019

Committee: Agriculture

- 1 A BILL FOR AN ACT relating to agriculture; to amend section 28-401,
- 2 Revised Statutes Cumulative Supplement, 2018; to adopt the Nebraska
- 3 Hemp Act; to define and redefine terms under the Uniform Controlled
- 4 Substances Act; to repeal the original section; and to declare an
- 5 emergency.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 23 of this act shall be known and may be
2 cited as the Nebraska Hemp Act.

3 Sec. 2. For purposes of the Nebraska Hemp Act:

4 (1) Broker means to engage or participate in the marketing of hemp
5 by acting as an intermediary or negotiator between prospective buyers and
6 sellers;

7 (2) Cannabis means the plant Cannabis sativa L. and any part of that
8 plant, whether growing or not;

9 (3) Commission means the Nebraska Hemp Commission;

10 (4) Department means the Department of Agriculture;

11 (5) Director means the Director of Agriculture or his or her
12 designee;

13 (6) GPS coordinates means latitude and longitude coordinates derived
14 from a global positioning system;

15 (7) Grow means to plant, propagate, grow, cultivate, or harvest live
16 plants or viable seeds;

17 (8) Grower means a person registered by the department under the
18 Nebraska Hemp Act to grow hemp;

19 (9) Handle means to possess, store, or transport hemp on premises
20 owned, operated, or controlled by a registered grower or licenses
21 processor-handler;

22 (10) Hemp means the plant Cannabis sativa L. and any part of that
23 plant, including the viable seeds of that plant and all derivatives,
24 extracts, cannabinoids, isomers, acids, salts, and salts of isomers,
25 whether growing or not, with a delta-9 tetrahydrocannabinol concentration
26 of not more than three-tenths percent on a dry weight basis. Hemp
27 includes hemp commodities and products and topical or ingestible animal
28 or consumer products derived from the plant Cannabis sativa L. with a
29 delta-9 tetrahydrocannabinol concentration of not more than three-tenths
30 percent on a dry weight basis;

31 (11) Location ID means the unique identifier established by the

1 applicant for each unique set of GPS coordinates where hemp will be
2 grown, handled, stored, processed, or brokered;

3 (12) Market means to promote or sell hemp or a hemp commodity or
4 product. Market includes, but is not limited to, efforts to advertise and
5 gather information about the needs or preferences of potential consumers
6 or suppliers;

7 (13) Nonviable seed means seed that has been crushed, dehulled, heat
8 treated, or otherwise rendered to have a zero percent germination rate;

9 (14) Person means an individual, partnership, corporation, limited
10 liability company, association, or other legal entity;

11 (15) Plot means a contiguous area in a field, greenhouse, or indoor
12 growing structure containing the same variety of hemp throughout the
13 area;

14 (16) Postsecondary institution means a postsecondary institution as
15 defined in section 85-2403 that also meets the requirements of 20 U.S.C.
16 1001, as such section existed on January 1, 2019;

17 (17) Process means to convert raw hemp into a marketable form;

18 (18) Processor-handler means a person licensed by the department
19 under the Nebraska Hemp Act to process, handle, broker, or market hemp;

20 (19) Propagule means a plant or plant part that is utilized to grow
21 a new plant;

22 (20) Testing facility means a testing facility operated by the
23 University of Nebraska;

24 (21) THC means tetrahydrocannabinol;

25 (22) Variety means a subdivision of a species that has the following
26 characteristics:

27 (a) The subdivision is uniform, in the sense that variations between
28 the subdivision and other subdivisions in essential and distinctive
29 characteristics are describable; and

30 (b) The subdivision is distinct, in the sense that the subdivision
31 can be differentiated by one or more identifiable morphological,

1 physiological, or other characteristics from all other known
2 subdivisions.

3 Sec. 3. (1) The department, a postsecondary institution, a grower,
4 or a processor-handler that transports hemp for purposes authorized under
5 the Nebraska Hemp Act shall include along with a shipment of hemp a
6 letter on the department's or the postsecondary institution's letterhead,
7 or a copy of his or her registration or license, whichever is applicable,
8 that provides notice that the shipment includes hemp authorized under
9 such act.

10 (2) A postsecondary institution may receive direct grants from the
11 federal government or any other source for the purpose of conducting
12 research authorized under the Nebraska Hemp Act.

13 Sec. 4. (1) The department shall establish, operate, and administer
14 a hemp grower registration program. Except as otherwise provided under
15 the Nebraska Hemp Act for a postsecondary institution, a person shall not
16 grow hemp in this state unless the person is registered as a grower under
17 the act. A person other than a postsecondary institution that wishes to
18 grow hemp in this state shall submit the registration application fee
19 provided under section 14 of this act and register with the department on
20 a form prescribed by the department that includes, but is not limited to,
21 the following:

22 (a) The applicant's full name, birthdate, mailing address, telephone
23 number, and valid and monitored electronic mail address. If the applicant
24 is not an individual, the full name of each officer and director,
25 partner, member, or owner owning in excess of ten percent of equity or
26 stock, including his or her birthdate, title, and valid and monitored
27 electronic mail address;

28 (b) The proposed acreage or greenhouse or other indoor square
29 footage to be planted;

30 (c) The street address, location ID, and GPS coordinates for each
31 field, greenhouse, building, or other site where hemp will be grown,

1 handled, or stored; and

2 (d) Maps depicting each field, greenhouse, building, or other site
3 where hemp will be grown, handled, or stored, with appropriate
4 indications for entrances, field boundaries, and specific locations
5 corresponding to the GPS coordinates provided under subdivision (c) of
6 this subsection.

7 (2) An initial grower registration application may be submitted at
8 any time. An initial grower registration issued by the department expires
9 at midnight on November 30 in the year in which it is issued.

10 (3) A renewal grower registration is valid from December 1 until
11 midnight on the following November 30.

12 (4) An application to renew an existing grower registration shall be
13 postmarked on or before November 30. An application postmarked after
14 November 30 is subject to a late fee of two hundred fifty dollars.

15 (5) An application and supporting documents submitted to the
16 department under this section are not public records subject to
17 disclosure pursuant to sections 84-712 to 84-712.09.

18 Sec. 5. (1) The department shall establish, operate, and administer
19 a hemp processor-handler licensing program. Except as otherwise provided
20 under the Nebraska Hemp Act for a postsecondary institution or a testing
21 facility, a person shall not process, handle, broker, or market hemp in
22 this state unless the person is licensed as a processor-handler under the
23 act. A person other than a postsecondary institution that wishes to
24 process, handle, broker, or market hemp in this state shall submit the
25 license application fee provided under section 14 of this act and apply
26 to the department for a processor-handler license on a form prescribed by
27 the department that includes, but is not limited to, the following:

28 (a) The applicant's full name, birthdate, mailing address, telephone
29 number, and valid and monitored electronic mail address. If the applicant
30 is not an individual, the full name of each officer and director,
31 partner, member, or owner owning in excess of ten percent of equity or

1 stock, including his or her birthdate, title, and valid and monitored
2 electronic mail address;

3 (b) The street address, location ID, and GPS coordinates for each
4 building or site where hemp will be processed, handled, stored, or
5 brokered; and

6 (c) Maps depicting each field, greenhouse, building, or other site
7 where hemp will be processed, handled, stored, or brokered, with
8 appropriate indications for entrances and specific locations
9 corresponding to the GPS coordinates provided under subdivision (b) of
10 this subsection.

11 (2) An initial processor-handler license application may be
12 submitted at any time. An initial processor-handler license issued by the
13 department expires at midnight on November 30 in the year in which it is
14 issued.

15 (3) A renewal processor-handler license is valid from December 1
16 until midnight on the following November 30.

17 (4) An application to renew an existing processor-handler license
18 shall be postmarked on or before November 30. An application postmarked
19 after November 30 is subject to a late fee of two hundred fifty dollars.

20 (5) An application and supporting documents submitted to the
21 department under this section are not public records subject to
22 disclosure pursuant to sections 84-712 to 84-712.09.

23 Sec. 6. (1) The department shall approve or deny a grower
24 registration or processor-handler license application submitted under the
25 Nebraska Hemp Act in a timely manner. The department shall deny a
26 registration or license application if the application is incomplete or
27 if any of the following apply:

28 (a) The applicant, if an individual, is under the age of 18;

29 (b) The applicant's growing, handling, storage, processing, or
30 brokering sites are not located in this state;

31 (c) The applicant has not demonstrated, as determined by the

1 director, a willingness to comply with the department's rules and
2 regulations, instructions from the department, or instructions from a law
3 enforcement agency;

4 (d) The applicant has unpaid fees, fines, or civil penalties owed to
5 this state under the act;

6 (e) The applicant has made false statements or representations, as
7 determined by the director, to the department or a law enforcement
8 agency; or

9 (f) The applicant has had a grower registration or processor-handler
10 license revoked in the five years preceding the date of application.

11 (2) If the application is denied because it is incomplete, the
12 department shall notify the applicant in writing within a timely manner
13 after the department receives the application describing the deficiency
14 and requesting additional information.

15 Sec. 7. (1) If the department denies a grower registration or
16 processor-handler license application under the Nebraska Hemp Act, the
17 department shall notify the applicant of the denial in writing by letter
18 or electronic mail.

19 (2) An applicant may appeal a denial of his or her registration or
20 license application by submitting to the department a written request for
21 a hearing. The applicant shall submit the request to the department not
22 more than fifteen days after the date of the denial.

23 (3) The department shall conduct a hearing requested under this
24 section in accordance with the Administrative Procedure Act.

25 Sec. 8. (1) A grower consents to all of the following:

26 (a) Entry onto, and inspection of, all premises registered pursuant
27 to section 4 of this act by the department, or by a law enforcement
28 agency at the direction of the department, with or without cause, and
29 with or without advance notice, where hemp or hemp cultivation equipment
30 or materials are located or to be located;

31 (b) Testing of samples of cannabis material in possession of the

1 grower by a testing facility. The fee for testing under this subdivision
2 shall be limited to reasonable costs of conducting the testing;

3 (c) Forfeiture and destruction of any of the following, without
4 compensation:

5 (i) Cannabis found to have a measured delta-9 THC content greater
6 than three-tenths percent on a dry weight basis;

7 (ii) Hemp present at a location that is not included in the grower's
8 registration; or

9 (iii) Hemp that is grown, handled, or stored in a manner that
10 violates the Nebraska Hemp Act; and

11 (d) The risk of financial or other loss under the Nebraska Hemp Act
12 is borne solely by the grower.

13 (2) A grower shall not do any of the following:

14 (a) Handle or store hemp not grown under the authority of his or her
15 grower registration unless licensed as a processor-handler; and

16 (b) Interplant hemp with any other crop without express written
17 permission from the department. As used in this subdivision, interplant
18 means to plant a crop of hemp together with a crop that is not hemp on a
19 single plot of land.

20 (3) Upon request from the department, or from a law enforcement
21 agency as directed by the department, a grower shall immediately produce
22 a copy of his or her registration for inspection.

23 Sec. 9. (1) A processor-handler consents to all of the following:

24 (a) Entry onto, and inspection of, all premises licensed pursuant to
25 section 5 of this act by the department, or by a law enforcement agency
26 at the direction of the department, with or without cause, and with or
27 without advance notice, where hemp or hemp processing equipment or
28 materials are located or to be located;

29 (b) Collection by the department of samples of cannabis material in
30 possession of the processor-handler at any time;

31 (c) Forfeiture and destruction of any of the following, without

1 compensation:

2 (i) Cannabis found to have a measured delta-9 THC content greater
3 than three-tenths percent on a dry weight basis;

4 (ii) Hemp that is processed, handled, stored, or brokered in a
5 manner that violates the Nebraska Hemp Act; and

6 (iii) Live hemp plants unless the processor-handler is also
7 registered as a grower; and

8 (d) The risk of financial or other loss under the Nebraska Hemp Act
9 is borne solely by the processor-handler.

10 (2) Upon request from the department, or from a law enforcement
11 agency as directed by the department, a processor-handler shall
12 immediately produce a copy of his or her license for inspection.

13 Sec. 10. (1) If any of the following allegations are made
14 concerning a grower or processor-handler, the department shall suspend
15 his or her registration or license for not more than sixty days:

16 (a) The grower or processor-handler intentionally grew or was in
17 possession of cannabis with a delta-9 THC content greater than three-
18 tenths percent on a dry weight basis;

19 (b) The grower or processor-handler violated a provision of the
20 Nebraska Hemp Act;

21 (c) The grower or processor-handler made a false statement, as
22 determined by the department, to the department or a law enforcement
23 agency; or

24 (d) The grower or processor-handler failed to comply with an
25 instruction or order from the department or a law enforcement agency.

26 (2) If the department suspends a registration or license, the
27 department shall notify the grower or processor-handler in writing that
28 his or her registration or license has been suspended.

29 (3) A person whose grower registration has been suspended under this
30 section shall not harvest or remove hemp from the premises where hemp was
31 located at the time the department issued its notice of suspension,

1 except as authorized in writing by the department.

2 (4) A person whose processor-handler license has been suspended
3 under this section shall not process or remove hemp from the premises
4 where hemp was located at the time the department issued its notice of
5 suspension, except as authorized in writing by the department.

6 Sec. 11. (1) The department shall not permanently revoke a
7 registration or license suspended under section 10 of this act unless the
8 department has notified the grower or processor-handler of the allegation
9 against him or her and given him or her an opportunity for a hearing to
10 contest the revocation.

11 (2) The department shall schedule a registration or license
12 revocation hearing for a date as soon as practicable that is not more
13 than sixty days after the date of notification of suspension.

14 (3) The hearing shall be conducted in accordance with the
15 Administrative Procedure Act.

16 (4) If the director finds by a preponderance of the evidence that an
17 allegation under section 10 of this act is true, the director shall
18 revoke the registration or license effective immediately and the
19 department, or a law enforcement agency as directed by the department,
20 shall confiscate all cannabis that is in the person's possession or order
21 it to be destroyed. Destruction shall be conducted by the department
22 pursuant to the Noxious Weed Control Act. The cost of destruction shall
23 be paid by the grower or processor-handler.

24 (5) The department or a law enforcement agency shall not owe
25 compensation or indemnity for the value of the cannabis destroyed or
26 confiscated under this section.

27 (6) A person whose registration or license has been revoked is
28 barred from participation as a grower or processor-handler in any
29 capacity for a minimum of five years from the date on which the
30 registration or license was revoked.

31 (7) If the director does not find by a preponderance of the evidence

1 that an allegation under section 10 of this act is true, the department
2 shall lift the suspension imposed under section 10 of this act within
3 twenty-four hours.

4 Sec. 12. (1) A grower that intends to grow, harvest, or destroy a
5 hemp crop shall schedule a test of a sample of the crop by a testing
6 facility, and the testing facility shall test the sample not less than
7 fifteen days before the intended growing, harvest, or destruction date.

8 (2) A grower who grows, harvests, or destroys a crop before
9 receiving the results of testing under this section is subject to
10 suspension and revocation of his or her registration.

11 (3) The testing facility shall measure the THC concentration of each
12 sample collected under this section. The following apply to the THC test
13 results:

14 (a) If the results of the THC test indicate a delta-9 THC
15 concentration of less than three-tenths percent on a dry weight basis,
16 the testing facility shall provide to the grower and to the department a
17 certified report stating that result;

18 (b) If the results of the THC test indicate a delta-9 THC
19 concentration that is equal to or greater than three-tenths percent on a
20 dry weight basis, the grower may destroy the crop or repeat the testing
21 an additional two times. The testing facility shall provide to the grower
22 and to the department a certified report stating the result of each test
23 performed under this subdivision; and

24 (c) If a third THC test under this subsection indicates a delta-9
25 THC concentration that is equal to or greater than three-tenths percent,
26 the testing facility shall provide to the grower and to the department a
27 certified report stating such result, and the department or a law
28 enforcement agency directed by the department shall confiscate all
29 cannabis that is in the grower's possession or order it destroyed.
30 Destruction shall be conducted by the department pursuant to the Noxious
31 Weed Act.

1 (4) The department shall adopt and promulgate rules and regulations
2 for testing under this section. All costs for testing and destruction
3 under this section shall be paid by the grower.

4 (5) An individual who allows a falsified sample of a hemp crop to be
5 taken by the testing facility under this section is guilty of a Class IV
6 felony and shall be imprisoned for not less than one year and shall be
7 fined five thousand dollars.

8 Sec. 13. (1) Before implementing an alteration to a site listed in
9 a grower's registration, the grower shall submit a site modification
10 request form as prescribed by the department and the required fee as
11 provided in section 14 of this act, based on the number of requested
12 alterations, and obtain written approval from the department.

13 (2) The department shall not approve a site modification request
14 under this section unless the grower has paid the site modification fee
15 in full.

16 Sec. 14. (1) Fees under the Nebraska Hemp Act are as follows:

17 (a) A grower registration fee of one hundred dollars;

18 (b) A processor-handler license application fee of one thousand
19 three hundred fifty dollars; and

20 (c) A site modification fee of fifty dollars for each alteration to
21 a site listed in a grower registration after the registration has been
22 issued.

23 (2) All fees under this section shall be paid with a check or money
24 order payable to the department within fifteen days of invoice.

25 (3) A fee required under this section is nonrefundable.

26 (4) All fees collected under this section shall be remitted to the
27 State Treasurer for credit to the Nebraska Hemp Program Fund.

28 Sec. 15. (1) The Nebraska Hemp Commission is created and shall be
29 housed in the department for administrative purposes.

30 (2) The commission shall consist of the following members:

31 (a) The director or his or her designee;

1 (b) The Superintendent of Law Enforcement and Public Safety or his
2 or her designee;

3 (c) The Director of Economic Development or his or her designee;

4 (d) The dean of the University of Nebraska College of Agricultural
5 Sciences and Natural Resources or his or her designee;

6 (e) One member representing each postsecondary institution choosing
7 to participate in the commission;

8 (f) The president of the Nebraska County Sheriffs' Association or
9 his or her designee; and

10 (g) Four members appointed by the Governor representing the
11 following interests:

12 (i) A Nebraska farmer with an interest in growing hemp;

13 (ii) A retailer of hemp products;

14 (iii) A wholesaler of hemp products; and

15 (iv) A manufacturer of hemp products.

16 (3) Members appointed pursuant to subdivision (2)(g) of this section
17 shall serve a term of four years and may be reappointed.

18 Sec. 16. (1) A majority of the members of the commission shall
19 constitute a quorum.

20 (2) The director shall serve as vice-chairperson, and the commission
21 shall annually elect one member from among the remaining members to serve
22 as chairperson.

23 Sec. 17. (1) The commission shall meet quarterly and may meet more
24 often upon the call of the chairperson or by request of a majority of the
25 members.

26 (2) The commission shall be appointed and conduct its first meeting
27 no later than September 1, 2019.

28 (3) The members of the commission shall serve without pay but shall
29 receive actual and necessary expenses incurred while on official business
30 as provided in sections 81-1174 to 81-1177.

31 (4) Administrative support services shall be provided to the

1 commission by the department at the request of the commission, including,
2 but not limited to, services relating to:

3 (a) Financial accounting, recordkeeping, and other budgetary
4 functions; and

5 (b) Meeting coordination and staffing.

6 (5) Administrative expenses of the commission, including, but not
7 limited to, expenses for the services outlined in subsection (4) of this
8 section, shall be paid from the Nebraska Hemp Program Fund as approved by
9 the commission.

10 Sec. 18. (1) The commission shall periodically report to the
11 Governor and to the Legislature on hemp policies and practices that will
12 result in the proper legal growing, management, marketing, and use of the
13 state's potential hemp industry. Any report submitted to the Legislature
14 shall be submitted electronically. These policies and practices shall, at
15 a minimum, address the following:

16 (a) Federal laws and regulatory constraints;

17 (b) The economic and financial feasibility of a hemp market in
18 Nebraska;

19 (c) Nebraska businesses that may potentially utilize hemp;

20 (d) Examination of research on hemp production and utilization;

21 (e) The potential for globally marketing Nebraska hemp;

22 (f) The feasibility of private funding for the Nebraska hemp
23 research program;

24 (g) Law enforcement concerns;

25 (h) Statutory and regulatory schemes for growing of hemp by private
26 producers; and

27 (i) Technical support and education about hemp.

28 (2) The commission is authorized to develop and coordinate programs
29 to promote hemp. The commission shall establish such programs with the
30 goal of securing at least twenty percent participation by small and
31 emerging businesses in the Nebraska hemp industry, including, but not

1 limited to, growing, processing, transporting, marketing, and selling
2 hemp.

3 Sec. 19. (1) The Nebraska Hemp Program Fund is established. The
4 fund shall be administered by the department and the commission for the
5 purpose of covering the costs of the department and commission in
6 administering the Nebraska Hemp Act, as approved by the department and
7 the commission, and for hemp promotional programs developed and
8 coordinated by the commission pursuant to section 18 of this act.

9 (2) The fund may receive appropriations by the Legislature, gifts,
10 grants, federal funds, and any other funds both public and private, and
11 all registration and license application fees collected by the department
12 shall be remitted to the State Treasurer for credit to the fund.

13 (3) Any money in the fund available for investment shall be invested
14 by the state investment officer pursuant to the Nebraska Capital
15 Expansion Act and the Nebraska State Funds Investment Act.

16 Sec. 20. (1) A person who individually, or by the action of his or
17 her agent or employee, or as the agent or employee of another, violates
18 the Nebraska Hemp Act or a rule or regulation adopted and promulgated
19 under the act is subject to an administrative fine. After notice to the
20 alleged violator, the director shall conduct a hearing in accordance with
21 the Administrative Procedure Act to determine if a fine should be
22 imposed. The department shall impose a fine authorized by this section as
23 follows:

24 (a) For a first violation, not less than one hundred dollars or more
25 than five hundred dollars, plus the actual costs of any investigation;

26 (b) For a second violation within five years after the first
27 violation, not less than five hundred dollars or more than one thousand
28 dollars, plus the actual costs of any investigation; or

29 (c) For a third or subsequent violation within five years after the
30 date of the first violation, not less than one thousand dollars or more
31 than two thousand dollars, plus the actual costs of any investigation.

1 (2) A decision of the director under this section may be appealed,
2 and such appeal shall be in accordance with the Administrative Procedure
3 Act.

4 (3) The director shall advise the Attorney General of the failure of
5 any person to pay an administrative fine imposed under this section. The
6 Attorney General shall bring an action in Lancaster County district court
7 to recover the fine.

8 (4) Any administrative fine collected under this section shall be
9 remitted to the State Treasurer for distribution in accordance with
10 Article VII, section 5, of the Constitution of Nebraska.

11 Sec. 21. A city, county, or other political subdivision of this
12 state shall not adopt any rule, regulation, resolution, code, or
13 ordinance to restrict or limit any requirements under the Nebraska Hemp
14 Act relating to hemp. The act supersedes and preempts any rule,
15 regulation, resolution, code, or ordinance of any city, county, or
16 political subdivision of this state relating to hemp.

17 Sec. 22. The Nebraska Hemp Act shall constitute the state plan by
18 which the State of Nebraska monitors and regulates hemp production in
19 compliance with the federal Agriculture Improvement Act of 2018, Public
20 Law 115-334. No later than thirty days after the effective date of this
21 act, the director shall submit such state plan to the United States
22 Secretary of Agriculture for approval.

23 Sec. 23. The State of Nebraska shall not treat hemp or hemp
24 commodities and products as a Schedule I or Schedule II controlled
25 substance under 26 U.S.C. 280E, as such section existed on January 1,
26 2019, when calculating sales or income tax owed to the state. The
27 department shall update and issue guidance to taxpayers on how to
28 properly adjust Internal Revenue Service forms filed with the department
29 to reflect any proper tax in conformance with federal law.

30 Sec. 24. Section 28-401, Revised Statutes Cumulative Supplement,
31 2018, is amended to read:

1 28-401 As used in the Uniform Controlled Substances Act, unless the
2 context otherwise requires:

3 (1) Administer means to directly apply a controlled substance by
4 injection, inhalation, ingestion, or any other means to the body of a
5 patient or research subject;

6 (2) Agent means an authorized person who acts on behalf of or at the
7 direction of another person but does not include a common or contract
8 carrier, public warehouse keeper, or employee of a carrier or warehouse
9 keeper;

10 (3) Administration means the Drug Enforcement Administration of the
11 United States Department of Justice;

12 (4) Controlled substance means a drug, biological, substance, or
13 immediate precursor in Schedules I through V of section 28-405.
14 Controlled substance does not include distilled spirits, wine, malt
15 beverages, tobacco, hemp, or any nonnarcotic substance if such substance
16 may, under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et
17 seq., as such act existed on January 1, 2014, and the law of this state,
18 be lawfully sold over the counter without a prescription;

19 (5) Counterfeit substance means a controlled substance which, or the
20 container or labeling of which, without authorization, bears the
21 trademark, trade name, or other identifying mark, imprint, number, or
22 device, or any likeness thereof, of a manufacturer, distributor, or
23 dispenser other than the person or persons who in fact manufactured,
24 distributed, or dispensed such substance and which thereby falsely
25 purports or is represented to be the product of, or to have been
26 distributed by, such other manufacturer, distributor, or dispenser;

27 (6) Department means the Department of Health and Human Services;

28 (7) Division of Drug Control means the personnel of the Nebraska
29 State Patrol who are assigned to enforce the Uniform Controlled
30 Substances Act;

31 (8) Dispense means to deliver a controlled substance to an ultimate

1 user or a research subject pursuant to a medical order issued by a
2 practitioner authorized to prescribe, including the packaging, labeling,
3 or compounding necessary to prepare the controlled substance for such
4 delivery;

5 (9) Distribute means to deliver other than by administering or
6 dispensing a controlled substance;

7 (10) Prescribe means to issue a medical order;

8 (11) Drug means (a) articles recognized in the official United
9 States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United
10 States, official National Formulary, or any supplement to any of them,
11 (b) substances intended for use in the diagnosis, cure, mitigation,
12 treatment, or prevention of disease in human beings or animals, and (c)
13 substances intended for use as a component of any article specified in
14 subdivision (a) or (b) of this subdivision, but does not include devices
15 or their components, parts, or accessories;

16 (12) Deliver or delivery means the actual, constructive, or
17 attempted transfer from one person to another of a controlled substance,
18 whether or not there is an agency relationship;

19 (13) Hemp has the same meaning as in section 2 of this act;

20 (14)(a) ~~(13)~~ Marijuana means all parts of the plant of the genus
21 cannabis, whether growing or not, the seeds thereof, and every compound,
22 manufacture, salt, derivative, mixture, or preparation of such plant or
23 its seeds.

24 (b) Marijuana ~~, but~~ does not include the mature stalks of such
25 plant, hashish, tetrahydrocannabinols extracted or isolated from the
26 plant, fiber produced from such stalks, oil or cake made from the seeds
27 of such plant, any other compound, manufacture, salt, derivative,
28 mixture, or preparation of such mature stalks, the sterilized seed of
29 such plant which is incapable of germination, or cannabidiol contained in
30 a drug product approved by the federal Food and Drug Administration or
31 obtained pursuant to sections 28-463 to 28-468.

1 (c) Marijuana does not include hemp.

2 (d) When the weight of marijuana is referred to in the Uniform
3 Controlled Substances Act, it means its weight at or about the time it is
4 seized or otherwise comes into the possession of law enforcement
5 authorities, whether cured or uncured at that time. ~~When industrial hemp~~
6 ~~as defined in section 2-5701 is in the possession of a person as~~
7 ~~authorized under section 2-5701, it is not considered marijuana for~~
8 ~~purposes of the Uniform Controlled Substances Act;~~

9 (15) ~~(14)~~ Manufacture means the production, preparation,
10 propagation, conversion, or processing of a controlled substance, either
11 directly or indirectly, by extraction from substances of natural origin,
12 independently by means of chemical synthesis, or by a combination of
13 extraction and chemical synthesis, and includes any packaging or
14 repackaging of the substance or labeling or relabeling of its container.
15 Manufacture does not include the preparation or compounding of a
16 controlled substance by an individual for his or her own use, except for
17 the preparation or compounding of components or ingredients used for or
18 intended to be used for the manufacture of methamphetamine, or the
19 preparation, compounding, conversion, packaging, or labeling of a
20 controlled substance: (a) By a practitioner as an incident to his or her
21 prescribing, administering, or dispensing of a controlled substance in
22 the course of his or her professional practice; or (b) by a practitioner,
23 or by his or her authorized agent under his or her supervision, for the
24 purpose of, or as an incident to, research, teaching, or chemical
25 analysis and not for sale;

26 (16) ~~(15)~~ Narcotic drug means any of the following, whether produced
27 directly or indirectly by extraction from substances of vegetable origin,
28 independently by means of chemical synthesis, or by a combination of
29 extraction and chemical synthesis: (a) Opium, opium poppy and poppy
30 straw, coca leaves, and opiates; (b) a compound, manufacture, salt,
31 derivative, or preparation of opium, coca leaves, or opiates; or (c) a

1 substance and any compound, manufacture, salt, derivative, or preparation
2 thereof which is chemically equivalent to or identical with any of the
3 substances referred to in subdivisions (a) and (b) of this subdivision,
4 except that the words narcotic drug as used in the Uniform Controlled
5 Substances Act does not include decocainized coca leaves or extracts of
6 coca leaves, which extracts do not contain cocaine or ecgonine, or
7 isoquinoline alkaloids of opium;

8 (17) ~~(16)~~ Opiate means any substance having an addiction-forming or
9 addiction-sustaining liability similar to morphine or being capable of
10 conversion into a drug having such addiction-forming or addiction-
11 sustaining liability. Opiate does not include the dextrorotatory isomer
12 of 3-methoxy-n methylmorphinan and its salts. Opiate includes its racemic
13 and levorotatory forms;

14 (18) ~~(17)~~ Opium poppy means the plant of the species *Papaver*
15 *somniferum* L., except the seeds thereof;

16 (19) ~~(18)~~ Poppy straw means all parts, except the seeds, of the
17 opium poppy after mowing;

18 (20) ~~(19)~~ Person means any corporation, association, partnership,
19 limited liability company, or one or more persons;

20 (21) ~~(20)~~ Practitioner means a physician, a physician assistant, a
21 dentist, a veterinarian, a pharmacist, a podiatrist, an optometrist, a
22 certified nurse midwife, a certified registered nurse anesthetist, a
23 nurse practitioner, a scientific investigator, a pharmacy, a hospital, or
24 any other person licensed, registered, or otherwise permitted to
25 distribute, dispense, prescribe, conduct research with respect to, or
26 administer a controlled substance in the course of practice or research
27 in this state, including an emergency medical service as defined in
28 section 38-1207;

29 (22) ~~(21)~~ Production includes the manufacture, planting,
30 cultivation, or harvesting of a controlled substance;

31 (23) ~~(22)~~ Immediate precursor means a substance which is the

1 principal compound commonly used or produced primarily for use and which
2 is an immediate chemical intermediary used or likely to be used in the
3 manufacture of a controlled substance, the control of which is necessary
4 to prevent, curtail, or limit such manufacture;

5 (24) ~~(23)~~ State means the State of Nebraska;

6 (25) ~~(24)~~ Ultimate user means a person who lawfully possesses a
7 controlled substance for his or her own use, for the use of a member of
8 his or her household, or for administration to an animal owned by him or
9 her or by a member of his or her household;

10 (26) ~~(25)~~ Hospital has the same meaning as in section 71-419;

11 (27) ~~(26)~~ Cooperating individual means any person, other than a
12 commissioned law enforcement officer, who acts on behalf of, at the
13 request of, or as agent for a law enforcement agency for the purpose of
14 gathering or obtaining evidence of offenses punishable under the Uniform
15 Controlled Substances Act;

16 (28) ~~(27)~~ Hashish or concentrated cannabis means (a) the separated
17 resin, whether crude or purified, obtained from a plant of the genus
18 cannabis or (b) any material, preparation, mixture, compound, or other
19 substance which contains ten percent or more by weight of
20 tetrahydrocannabinols. Resins ~~When resins extracted from industrial hemp~~
21 ~~as defined in section 2-5701 are in the possession of a person as~~
22 ~~authorized under section 2-5701, they are not considered hashish or~~
23 concentrated cannabis for purposes of the Uniform Controlled Substances
24 Act;

25 (29) ~~(28)~~ Exceptionally hazardous drug means (a) a narcotic drug,
26 (b) thiophene analog of phencyclidine, (c) phencyclidine, (d)
27 amobarbital, (e) secobarbital, (f) pentobarbital, (g) amphetamine, or (h)
28 methamphetamine;

29 (30) ~~(29)~~ Imitation controlled substance means a substance which is
30 not a controlled substance or controlled substance analogue but which, by
31 way of express or implied representations and consideration of other

1 relevant factors including those specified in section 28-445, would lead
2 a reasonable person to believe the substance is a controlled substance or
3 controlled substance analogue. A placebo or registered investigational
4 drug manufactured, distributed, possessed, or delivered in the ordinary
5 course of practice or research by a health care professional shall not be
6 deemed to be an imitation controlled substance;

7 (31)(a) ~~(30)(a)~~ Controlled substance analogue means a substance (i)
8 the chemical structure of which is substantially similar to the chemical
9 structure of a Schedule I or Schedule II controlled substance as provided
10 in section 28-405 or (ii) which has a stimulant, depressant, analgesic,
11 or hallucinogenic effect on the central nervous system that is
12 substantially similar to or greater than the stimulant, depressant,
13 analgesic, or hallucinogenic effect on the central nervous system of a
14 Schedule I or Schedule II controlled substance as provided in section
15 28-405. A controlled substance analogue shall, to the extent intended for
16 human consumption, be treated as a controlled substance under Schedule I
17 of section 28-405 for purposes of the Uniform Controlled Substances Act;
18 and

19 (b) Controlled substance analogue does not include (i) a controlled
20 substance, (ii) any substance generally recognized as safe and effective
21 within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C.
22 301 et seq., as such act existed on January 1, 2014, (iii) any substance
23 for which there is an approved new drug application, or (iv) with respect
24 to a particular person, any substance if an exemption is in effect for
25 investigational use for that person, under section 505 of the Federal
26 Food, Drug, and Cosmetic Act, 21 U.S.C. 355, as such section existed on
27 January 1, 2014, to the extent conduct with respect to such substance is
28 pursuant to such exemption;

29 (32) ~~(31)~~ Anabolic steroid means any drug or hormonal substance,
30 chemically and pharmacologically related to testosterone (other than
31 estrogens, progestins, and corticosteroids), that promotes muscle growth

1 and includes any controlled substance in Schedule III(d) of section
2 28-405. Anabolic steroid does not include any anabolic steroid which is
3 expressly intended for administration through implants to cattle or other
4 nonhuman species and has been approved by the Secretary of Health and
5 Human Services for such administration, but if any person prescribes,
6 dispenses, or distributes such a steroid for human use, such person shall
7 be considered to have prescribed, dispensed, or distributed an anabolic
8 steroid within the meaning of this subdivision;

9 (33) ~~(32)~~ Chart order means an order for a controlled substance
10 issued by a practitioner for a patient who is in the hospital where the
11 chart is stored or for a patient receiving detoxification treatment or
12 maintenance treatment pursuant to section 28-412. Chart order does not
13 include a prescription;

14 (34) ~~(33)~~ Medical order means a prescription, a chart order, or an
15 order for pharmaceutical care issued by a practitioner;

16 (35) ~~(34)~~ Prescription means an order for a controlled substance
17 issued by a practitioner. Prescription does not include a chart order;

18 (36) ~~(35)~~ Registrant means any person who has a controlled
19 substances registration issued by the state or the Drug Enforcement
20 Administration of the United States Department of Justice;

21 (37) ~~(36)~~ Reverse distributor means a person whose primary function
22 is to act as an agent for a pharmacy, wholesaler, manufacturer, or other
23 entity by receiving, inventorying, and managing the disposition of
24 outdated, expired, or otherwise nonsaleable controlled substances;

25 (38) ~~(37)~~ Signature means the name, word, or mark of a person
26 written in his or her own hand with the intent to authenticate a writing
27 or other form of communication or a digital signature which complies with
28 section 86-611 or an electronic signature;

29 (39) ~~(38)~~ Facsimile means a copy generated by a system that encodes
30 a document or photograph into electrical signals, transmits those signals
31 over telecommunications lines, and reconstructs the signals to create an

1 exact duplicate of the original document at the receiving end;

2 (40) ~~(39)~~ Electronic signature has the definition found in section
3 86-621;

4 (41) ~~(40)~~ Electronic transmission means transmission of information
5 in electronic form. Electronic transmission includes computer-to-computer
6 transmission or computer-to-facsimile transmission;

7 (42) ~~(41)~~ Long-term care facility means an intermediate care
8 facility, an intermediate care facility for persons with developmental
9 disabilities, a long-term care hospital, a mental health substance use
10 treatment center, a nursing facility, or a skilled nursing facility, as
11 such terms are defined in the Health Care Facility Licensure Act;

12 (43) ~~(42)~~ Compounding has the same meaning as in section 38-2811;

13 (44) ~~(43)~~ Cannabinoid receptor agonist shall mean any chemical
14 compound or substance that, according to scientific or medical research,
15 study, testing, or analysis, demonstrates the presence of binding
16 activity at one or more of the CB1 or CB2 cell membrane receptors located
17 within the human body; and

18 (45) ~~(44)~~ Lookalike substance means a product or substance, not
19 specifically designated as a controlled substance in section 28-405, that
20 is either portrayed in such a manner by a person to lead another person
21 to reasonably believe that it produces effects on the human body that
22 replicate, mimic, or are intended to simulate the effects produced by a
23 controlled substance or that possesses one or more of the following
24 indicia or characteristics:

25 (a) The packaging or labeling of the product or substance suggests
26 that the user will achieve euphoria, hallucination, mood enhancement,
27 stimulation, or another effect on the human body that replicates or
28 mimics those produced by a controlled substance;

29 (b) The name or packaging of the product or substance uses images or
30 labels suggesting that it is a controlled substance or produces effects
31 on the human body that replicate or mimic those produced by a controlled

1 substance;

2 (c) The product or substance is marketed or advertised for a
3 particular use or purpose and the cost of the product or substance is
4 disproportionately higher than other products or substances marketed or
5 advertised for the same or similar use or purpose;

6 (d) The packaging or label on the product or substance contains
7 words or markings that state or suggest that the product or substance is
8 in compliance with state and federal laws regulating controlled
9 substances;

10 (e) The owner or person in control of the product or substance uses
11 evasive tactics or actions to avoid detection or inspection of the
12 product or substance by law enforcement authorities;

13 (f) The owner or person in control of the product or substance makes
14 a verbal or written statement suggesting or implying that the product or
15 substance is a synthetic drug or that consumption of the product or
16 substance will replicate or mimic effects on the human body to those
17 effects commonly produced through use or consumption of a controlled
18 substance;

19 (g) The owner or person in control of the product or substance makes
20 a verbal or written statement to a prospective customer, buyer, or
21 recipient of the product or substance implying that the product or
22 substance may be resold for profit; or

23 (h) The product or substance contains a chemical or chemical
24 compound that does not have a legitimate relationship to the use or
25 purpose claimed by the seller, distributor, packer, or manufacturer of
26 the product or substance or indicated by the product name, appearing on
27 the product's packaging or label or depicted in advertisement of the
28 product or substance.

29 Sec. 25. Original section 28-401, Revised Statutes Cumulative
30 Supplement, 2018, is repealed.

31 Sec. 26. Since an emergency exists, this act takes effect when

1 passed and approved according to law.